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UB Viewpoint - Journalists may face contempt for protecting sources

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Once again, American journalists may be forced to choose between revealing news sources to whom they promised confidentiality and finding themselves in contempt of court. The problem lies in the excruciating ambiguity of federal case law governing reporters' testimonial privilege, and the solution — albeit unlikely — is federal legislation or a Supreme Court decision that tracks Maryland's own state shield law. The case concerns former Los Alamos weapons specialist Wen Ho Lee, who pleaded guilty to a single count of copying classified documents without permission. In early 1999, however, Lee was identified in the media as the chief suspect in an espionage investigation. Ultimately, the government was forced to drop 58 of the 59 charges against him, and Lee received an apology from the judge who dismissed the charges. Now Lee is suing the government for violating his privacy and has demanded that several reporters identify the sources of their information on the espionage investigation. On Oct. 9, U.S. District Judge Thomas Penfield Jackson ordered the journalists to comply, but all have so far declined. Lee's lawyer is said to be contemplating asking the court to find them in contempt. Journalists recognize an ethical obligation to protect confidential sources of news and believe their ability to collect and report information depends on maintaining that protection — even under threat of contempt. Most states, including Maryland, have enacted shield laws to ensure at least some degree of testimonial privilege. There is no federal statute that allows reporters to shield their confidential sources, and the Supreme Court seemed to say in 1972 that the Constitution did not compel such a privilege. For a variety of reasons, however, several federal circuit courts have interpreted that decision as supporting the privilege, although they disagree on its scope. The most recent opinion, from the 7th Circuit, rejects the privilege, but in a peculiar case where the reporters were seeking primarily to protect their own economic interests. The result of this hodge-podge of federal rulings is a disturbing regional inconsistency in an area that demands national certainty. Unfortunately, general hostility toward the press, the political balance of power in Congress and a conservative majority on the Supreme Court combine to make this an inopportune time to pursue a uniform national shield law. Fortunately, Maryland journalists enjoy the benefits of the nation's oldest and possibly strongest shield law. Under Maryland law, journalists may not be forced to reveal their news sources by any court, legislative body or administrative tribunal. Reporters may be compelled to reveal notes, outtakes and other information if the information is relevant to a significant legal issue, cannot be obtained by any other means and the public has an overriding interest in disclosure. It's too early to know how the Wen Ho Lee case will play out. But it's a shame that those reporters cannot avail themselves of Maryland's powerful privilege.

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